srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 846 OF 2005.
IN
WRIT PETITION NO. 3899 OF 1992.

Divakar G. Rothe. ..Petitioner.
Versus.
The Administrator and ors. ..Respondents.

Mr. I. S. Thakur for the petitioner- Applicant.
Mrs. S. S. Bhende A.G.P. for respondent nos. 1 to 4, & 6 to 8.
Mr. R. D. Soni respondent nos. 9 to 13, 15, 17 & 19.

CORAM: S. B. MHASE &
D.G.KARNIK,JJ.

DATE: JULY 6, 2007.

P.C.

1. Learned counsel Mr. I. S. Thakur appearing for the applicant submits that the petition was disposed of in terms of the minutes of order, however, the minutes of order are not being obeyed by the respondent and therefore the respondent be constrained to obey the minutes of the order or recall the minutes of the order. Thus, the minutes of the order are not disputed but their execution is expected by the learned counsel for the applicant.

2. Chapter XVII, Rule-23 of the Appellate Side Rules prescribes the procedure for execution of order of this Court. Therefore, the remedy of approaching the appropriate forum under the said rule is available to the applicant. Therefore, this application is rejected.

3. At this stage the learned counsel for the applicant tried to raise his voice and stated that he is not being heard in the matter. He tried to submit that there is a fraud committed by the other side while recording the minutes of order. We are at loss to know when the applicant wanted to contend a fraud then in that circumstance he should not have insisted for implementation or execution of the order, because the fraud vitiates the order. Learned counsel submits that it is his alternate prayer. That means if the order is executed he is ready to get the fruits of the order and if the order is not obeyed then he wants to term it as fraud. Such a status cannot be obtained by the same order. Either the order can be acceptable to the party or it can be fraudulent. The whole thrust of the application is to seek intervention by this Court without following the execution proceeding as contemplated under Order - XVII Rule - 23 of the Appellate Side Rules. Therefore application is rejected.

4. At this stage the learned counsel for the applicant tried to rely upon the order passed on 15th December 2006 and tried to make a grievance that it is not complied with. Even if the order is not complied with the remedy under law is the recourse to the aforesaid provision. Therefore, the applicant shall follow that remedy. We refrain to entertain the application. Application is ultimately rejected.

(D.G.KARNIK, J.) (S.B.MHASE, J.)